

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

CONSTELLATION IP, LLC
Plaintiff

V.

AVIS BUDGET GROUP, INC., ET AL.
Defendants

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No. 5:07CV38

ORDER

Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for Assignment of Duties to United States Magistrate Judges, the above-entitled and numbered cause of action was referred to the Honorable Caroline M. Craven for pretrial purposes. On February 19, 2008, the Magistrate Judge issued a Claim Construction Order construing U.S. Patent No. 6,453,302 (“the ‘302 patent”). Among other things, the Magistrate Judge’s February 19, 2008 Order found no construction was necessary for nine disputed claim terms.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure¹ and 28 U.S.C. § 636, Defendants FedEx Corporation and FedEx Corporate Services, Inc. (collectively “FedEx”) filed Objections to the Magistrate Judge’s February 19 Order construing United States Patent No. 6,453,302 (“the ‘302 patent”) and recommending the denial of FedEx’s Motion for Summary Judgment of Invalidity Based on Indefiniteness. On June 2, 2008, FedEx filed Supplemental Authority in support of its Rule 72 Objections. FedEx asserts the Court should construe the nine claim terms consistent with the Federal Circuit’s *O2 Micro Int’l Ltd v. Beyond Innovation Tech. Co.*, No. 2007-1302, slip op. (Fed. Cir. April 3, 2008) opinion. The *O2 Micro* case was issued after the

¹ FED. R. CIV. P. 72(a) provides that a “district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge’s order found to be clearly erroneous or contrary to law.”

Magistrate Judge entered the claim construction order herein.

The District Judge has jurisdiction over the case at all times, retaining full authority to decide whether to refer a case to the Magistrate Judge, to review the Magistrate Judge's report, and to enter judgment. *Thomas v. Arn*, 474 U.S. 140, 154 (1985). Pursuant to this authority and in light of the Federal Circuit's opinion in *O2 Micro*, the Court will instruct the Magistrate Judge to re-analyze the nine claim terms which were not construed in the February 19 Order.

So ORDERED and SIGNED this 3rd day of June, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**